

Application No. 10/589,761
Amtd. Dated: Sept-27-2011
Reply to Office Action: Apr-27-2011

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REMARKS/ARGUMENTS

Petition is hereby made under the provisions of 37 CFR 1.136(a) for an extension of two months of the period for response to the Office Action. Authorization to charge the prescribed fee to our deposit account is enclosed.

The Examiner rejected claims 35, 36 and 38 under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicants regard as the invention. Claims 35 and 36 have been deleted.

Claim 38 has been amended to change the word "solution" in line 1 to "isolate".

Having regard to the amendments made to the claims, it is submitted that all claims are now definite and hence the rejection under 35 USC 112, second paragraph, should be withdrawn.

The Examiner rejected claims 35 to 36 under 35 USC 102(b) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over Murray (US 6,005,076) or WO 02/089,597 or "Future in Food for Canola Protein Ingredient" article.

The Examiner further rejected claims 35 to 36 under 35 USC 102(a) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over WO 03/088,760 or WO 2004/000,031 or WO 03/043,439 or WO 03/053,157.

Claims 35 and 36 have been deleted, thereby mooting these rejections.

The Examiner rejected claims 37 to 39 under 35 USC 102(a) as being anticipated by or, in the alternative, under 35 USC 103(a) as obvious over WO 02/089,597.

Claim 37 defines a food composition for aquaculture comprising a canola protein isolate having a protein content of at least about 90 wt% and having a

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canola protein profile which is about 25 to about 55 wt% of 2S canola protein, about 45 to about 75 wt% of 7S canola protein and about 0 to about 15 wt% of 12S canola protein. Claim 38 more narrowly defines the protein profile.

In discussing WO 02/089,597, the Examiner notes that the reference describes a canola protein isolate having a protein content of at least about 90 wt%, referring to page 36. The Examiner observes that:

"The protein profile is not given and neither does the Office have the resources to manufacture prior art products and make such comparisons. That burden is being shifted to applicant to determine whether the protein product is the same or is obvious over the claimed product."

WO 02/089,597 describes the production of a canola protein isolate by a procedure which involves extracting canola protein from canola oil seed meal, separating the resulting aqueous canola protein solution from the residual oil seed meal, concentrating the separated aqueous canola protein solution to a concentration of at least about 200 g/L, adding the concentrated protein solution to chilled water having a temperature below about 15°C to form protein micelles, which is settled to provide a protein micellar mass (PMM). The PMM is separated from supernatant and dried (see e.g. the Abstract).

As the Examiner correctly observes, the reference does not provide any protein profile analysis of the PMM. The canola protein isolate that is defined in claim 37 is formed by a similar process to that of WO 02/089,597, except that the steps of micelle formation and collecting are not carried out, but rather the concentrated canola protein solution is directly dried to provide the canola protein solution.

With respect to analysis, attention is directed to Logie et al WO 03/088,760, made of record herein by the IDS submitted March 29, 2007 and received in the PTO on April 2, 2007. This reference describes a procedure substantially identical to that described in WO 03/088,760 and provides a protein profile analysis of the PMM and a canola protein isolate derived from the supernatant

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in PMM formation. As set forth in paragraphs [0011] and [0012] on page 3 of PCT/CA03/088,760, the PMM-derived canola protein isolate consists predominantly of canola protein and comprises about 60 to about 98 wt% of 7S protein, about 1 to about 15 wt% of 12S canola protein and 0 to about 25 weight percent of 2S canola protein, preferably about 88 to about 98 wt% of 7S protein, about 1 to about 10 wt% 2S protein and 0 to about 6 wt% 2S protein.

The supernatant-derived canola protein isolate consists predominantly of 2S canola protein and comprises about 60 to about 95 wt% of 2S canola protein, about 5 to about 40 wt% of the 7S canola protein and 0 to about 5 wt% of the 12S canola protein, preferably about 70 to about 95 wt% of the 2S protein, about 5 to about 30 wt% of the 7S protein and 0 to about 20 wt% of 12S protein.

It is clear, therefore, that the protein profiles for the canola protein isolate claimed in claims 37 and 38 are different from those for the canola protein isolates produced in WO 02/089,597.

Accordingly, it is submitted that all claims are patentable over the cited prior art and hence the rejection of claims 37 to 39 under 35 USC 102(a) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over WO 02/089,597, should be withdrawn.

It is believed that this application is now in condition for allowance and my and favourable consideration and allowance are respectfully solicited.

Respectfully submitted,

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